

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

Filed Electronically: June 21, 2018

IDEKER FARMS, INC., <i>et al.</i> ,)	
)	
Plaintiffs,)	Case No.: 1:14-cv-00183-NBF
v.)	
)	Senior Judge Nancy B. Firestone
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

**UNITED STATES' RESPONSE TO PLAINTIFFS' MOTION FOR LEAVE TO FILE A
COMBINED REPLY TO THE UNITED STATES' RESPONSE TO PLAINTIFFS' BRIEF
REGARDING THE IMPACT OF *ST. BERNARD PARISH* ON PLAINTIFFS' MOTION
FOR RECONSIDERATION AND SURREPLY TO UNITED STATES' REPLY IN
SUPPORT OF ITS MOTION FOR RECONSIDERATION**

The United States files this response to Plaintiffs' motion for leave to file an additional brief, dated June 18, 2018. *See* Pls.' Mot. for Leave to File a Combined Reply to the United States' Resp. to Pls.' Br. Regarding the Impact of *St. Bernard Parish* on Pls.' Mot. for Recons. and Surreply to United States' Reply in Supp. of its Mot. for Recons. ("Plaintiffs' Motion"), ECF No. 443. Plaintiffs' Motion seeks permission to file a 20-page brief that will serve as the fourth brief supporting its motion for reconsideration (ECF No. 429) and as a sur-reply to the United States' motion for reconsideration (ECF No. 436). *Id.* ¶7. While the United States does not agree with Plaintiffs' reasoning, the United States does not oppose Plaintiffs' Motion. The United States requests, however, that if the Court grants Plaintiffs' Motion, that the Court allow the United States to file a brief to respond to any new arguments raised by Plaintiffs.

Here the United States is the movant for its motion for reconsideration and it should have the opportunity to respond to any new arguments raised by Plaintiffs. The issue is not who has the burden of proof on causation, as suggested by Plaintiffs, the issue is who is the movant for the last-filed motion for reconsideration—the United States. *See* Pls.' Mot. ¶¶ 5-6. Plaintiffs

already filed a response to the United States’ motion for reconsideration and the United States filed a reply in which it simply responded to the various arguments advanced by Plaintiffs. *See* ECF No. 442. In this situation, sur-replies “are highly disfavored” because they are normally made by non-movants in an attempt to “have the last word on a matter.” *See, e.g., Am. Safety Council, Inc. v. United States*, 122 Fed. Cl. 426, 431 (2015) (quoting *Lacher v. West*, 147 F. Supp. 2d 538, 539 (N.D. Tex. 2001)). That appears to be the case here. *See* Pls.’ Mot. ¶ 5 (opining that it is improper for the United States “to have the last word”). And the United States anticipates that Plaintiffs may advance new arguments. For example, Plaintiffs suggested in their last response brief that they reserved “the right to argue that the analysis of [*St. Bernard Parish*] is misguided.” ECF No. 440 at 1 n.1. This is not an argument currently before the Court. Should Plaintiffs raise that argument, or any other issue or argument not already addressed by the United States, the United States requests the opportunity to respond in advance of oral argument.

Respectfully submitted June 21, 2018.

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